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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,195	07/16/2002	Raymond Anthony Edgson	GAMBRO-259	1518
530 7590 08/24/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER DESANTO, MATTHEW F	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 08/24/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/088,195

Applicant(s)

EDGSON ET AL.

Examiner

Matthew F. DeSanto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 62-86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 62-86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/15/02, 8/12/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II, claims 62-86 in the reply filed on 4/19/04 is acknowledged.
2. Applicant's election without traverse of Species E – figure 5, in the reply filed on 4/19/04 is acknowledged.
3. Applicant also elects with traverse of Species A – figure 1, in the reply filed on 4/19/04.
4. The examiner understands that the election requirement was confusing. The species restriction was based on the figures and the embodiments in the specification, not on the claims and the Grouping of the claims in the restriction requirement. Therefore the Group I & II didn't correspond to the Groups on the Restriction requirement and was only labeled Group I & II to organize the different embodiments. Therefore, Species A is included in this restriction requirement.
5. No claims are withdrawn since the method claims were cancelled and the Species chosen read on the claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 62-86 are rejected under 35 U.S.C. 102(b) as being anticipated by Kruger et al. (USPN 5,498,338).

Kruger et al. discloses an apparatus for peritoneal dialysis comprising a pressure chamber including a first bag including an inlet for retaining a fresh fluid for supply to a patient and a second bag for retaining a spent fluid drained from a patient, weighing means for weighing said first and second bags, draining means for draining said spent fluid into said second bag by applying a negative pressure to said second bag in said pressure chamber under the control of said weighing means, and supply means for supplying said fresh fluid to said first bag, said supply means including a pump for pumping said fresh fluid at a predetermined replenishment flow rate during said draining of said spent fluid into said second bag irrespective of said negative pressure applied to said second bag (Figure 1, abstract, Columns 9, 10, 11, 19 as well as entire reference).

8. Claims 62-86 are rejected under 35 U.S.C. 102(b) as being anticipated by Peabody et al. (USPN 5,643,201).

Peabody et al. discloses an apparatus for peritoneal dialysis comprising a pressure chamber including a first bag including an inlet for retaining a fresh fluid for supply to a patient and a second bag for retaining a spent fluid drained from a patient, weighing means for weighing said first and second bags, draining means for draining said spent fluid into said second bag by applying a negative pressure

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to said second bag in said pressure chamber under the control of said weighing means, and supply means for supplying said fresh fluid to said first bag, said supply means including a pump for pumping said fresh fluid at a predetermined replenishment flow rate during said draining of said spent fluid into said second bag irrespective of said negative pressure applied to said second bag (Figure 1, abstract, Columns 4, 5 as well as entire reference).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F. DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Matthew DeSanto
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August 20, 2007